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Big demand, small paychecks: State struggles to retain public defenders

By David Exum/Jobfind correspondent
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Keeping public defenders employed in the Bay State is becoming next to impossible, said William J. Leahy, chief counsel for the Committee for Public Counsel Services (CPCS).

Due to the state's minimal starting salary of \$35,000 a year, Leahy said the average public defender stint is no more than five years before the court-appointed attorney finds a better-paying job in another state.

"It happens all the time," said Leahy, who has been at the helm of CPCS since 1991. "We can hire public defenders, we just can't retain them. Every year, it's getting tougher and tougher and the (public defenders) that really love their jobs can't afford to stay here."

Leahy said deep budget cuts at the state level over the last few years have caused 10 percent of his staff to seek employment elsewhere.

"These losses have resulted in a true counsel crisis," said Leahy. "The (losses) already have denied some poor people their essential constitutional right to counsel and has already begun to cripple the operations of our courts."

Recently, a public defender in Leahy's office with five years of experience who was making \$39,000 a year left CPCS after landing a position in Washington, D.C., that pays \$79,000 a year, Leahy said.

Other New England states also have low starting salaries for public defenders, but Leahy said most have a better raise structure than the Bay State. For example, he said an entry-level public defender's starting salary is \$34,154 in Vermont. But a Vermont public defender with two years of experience can expect to earn \$40,685 annually, while a public defender with five years experience can earn \$51,854, Leahy said.

Neighboring states that offer higher starting salaries to entry-level public defenders include Connecticut (\$46,600) and Rhode Island (\$44,000), according to Leahy. Figures comparing the salaries of public defenders across the country are not tabulated by the U.S. Labor Department's Bureau of Labor Statistics.

While the Massachusetts-based CPCS has 112 public defenders working throughout the commonwealth, Leahy said providing the poor with adequate representation will continue to be a strain until his staffers are paid better.

In an effort to reform the way court-appointed attorneys are paid in Massachusetts, Daniel B. Winslow, chief legal counsel to Gov. Mitt Romney, has proposed legislation that would categorize people seeking court-appointed attorneys into three classes: 1. Destitute 2. Indigent 3. Marginally indigent.

If a person were destitute, they would not be responsible to pay any legal fees. But if a person were deemed indigent or marginally indigent, they would be required to pay \$150 and \$300 for legal services, respectively.

"We believe we should encourage and reward efficiency of taxpayer's dollars," said Winslow.

Leahy said he strongly opposes the legislation.

"It attempts to evade the performance standards that have earned Massachusetts a well-deserved reputation as having the country's best structured assigned-counsel program," said Leahy.

John Flym, a professor at Northeastern University's School of Law, said state lawmakers aren't interested in making sure the

indigent get proper legal representation.

"All they are interested in is grinding the cases," said Flym, a professor of public law and policy at Northeastern. "They want to know how many cases each lawyer is able to process. It's all about productivity and the higher the numbers, the better."

Shira Diner, a public defender in Barnstable, said she is already feeling the pressure of trying to make ends meet on a yearly salary of \$36,000.

Diner, a recent graduate of Northeastern University's School of Law, said she'd like to stay in Massachusetts for her entire career, but with up to \$60,000 in student loans, the single, 29-year-old attorney doesn't think it's a reality.

"It's a struggle," said Diner, who juggles 35 to 40 cases at a time. "It is overwhelming, which I believe is a statement on how poorly CPCS is funded." A portion of Diner's loans for law school are taken care of each year through a forgiveness program instituted by Northeastern. The amount Northeastern pays is determined by Diner's yearly salary.

NU's School of Law also provides The Public Interest Law Scholars Program, a scholarship awarded to six students a year that pays 75 percent of their tuition.

Despite the low salary and stressful working conditions, third-year Northeastern law student Julie Olson said she can't wait to graduate and become a public defender in Massachusetts.

"Nothing makes me feel more alive and energized than this type of work," said Olson, who recently completed a cooperative education assignment in Atlanta at the Southern Center for Human Rights.

Olson also said Northeastern's public law program, which received national recognition from U.S. News and World Report magazine, is essential to understanding the profession.

"Northeastern is the only school that is going to put you in the trenches before you even graduate," said Olson. "I applied to a bunch of other schools, but I chose Northeastern because at the end of your time here you really begin to get a sense of what it takes to be a public defender."

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